



Department of Energy
Washington, DC 20585

June 23, 2005

Mr. Robert A. Pedde
President
Westinghouse Savannah River Company
Savannah River Site
Aiken, South Carolina 29808

Dear Mr. Pedde:

This letter responds to your January 12, 2005, request for an exemption from a provision contained in title 10, Code of Federal Regulations, part 835 (10 CFR 835), "Occupational Radiation Protection." The purpose of the exemption request is to permit Westinghouse Savannah River Company (WSRC) to use certain units in recording bioassay results.

The Office of Environment, Safety and Health conducted a Technical Review (enclosure 1) of the exemption request. Staff from the Office of Environmental Management concurs with this Technical Review. Based on the review of the information that was provided, the Assistant Secretary for Environment, Safety and Health is granting WSRC an exemption, with one condition, from the applicable provision of 10 CFR 835.

The National Nuclear Security Administration (NNSA) has reviewed the information that was provided and concurs with the enclosed Technical Review. Accordingly, NNSA is also granting an exemption, with the same condition, for WSRC NNSA facilities.

The enclosed Technical Review provides additional information concerning the Exemption Decision (enclosure 2).

Sincerely,

A handwritten signature in black ink, appearing to read "J. Shaw", is positioned above the name John Spitaleri Shaw.

John Spitaleri Shaw
Assistant Secretary for
Environment, Safety and Health

A handwritten signature in black ink, appearing to read "T. P. D'Agostino", is positioned above the name Thomas P. D'Agostino.

Thomas P. D'Agostino
Acting Deputy Administrator for
Defense Programs
National Nuclear Security Administration

2 Enclosures

cc w/enclosures:
See attached sheet.



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Pursuant to 10 CFR 820.66, WSRC has 15 days from the date of the filing of this decision to file a Request to Review with the Office of Environment, Safety and Health. The Request to Review shall state, specifically, the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested. If no Request to Review is submitted, the Exemption Decision becomes a final order 15 days after it is filed.

6/13/05
Date

JFS
John Spitaleri Shaw
Assistant Secretary for
Environment, Safety and Health

6/20/05
Date

T.P.D'Agostino
Thomas P. D'Agostino
Acting Deputy Administrator for
Defense Programs
National Nuclear Security Administration

Technical Review

Westinghouse Savannah River Company (WSRC), Title 10, Code of Federal Regulations, Part 835 (10 CFR 835) Exemption Request

On January 12, 2005, WSRC submitted a request for relief from a requirement contained in 10 CFR 835, "Occupational Radiation Protection," as it pertains to the use of certain units in reporting bioassay results.

As discussed below, relief from the provision of 10 CFR 835 is justified. The Department of Energy (DOE) Office of Worker Protection Policy and Programs (EH-52) recommends granting the requested exemption to the 10 CFR 835 requirement, with a condition, as specifically discussed in this Technical Review.

Discussion of Exemption Request

General

In particular, WSRC requested an exemption from the requirement, contained in 10 CFR 835.4, to use certain units in records required by 10 CFR 835.

Requirement from which Exemption is Sought

10 CFR 835.4, "Radiological Units":

"Unless otherwise specified, the quantities used in the records required by this part shall be clearly indicated in special units of curie, rad, roentgen, or rem, including multiples and subdivisions of these units. The SI units, becquerel (Bq), gray (Gy), and sievert (Sv), are only provided parenthetically in this part for reference with scientific standards."

Results of Analysis

Background

The WSRC exemption request is similar to two previous exemption requests. The Pacific Northwest National Laboratory (PNNL) and the CH2M HILL Hanford Group Inc. (CH2M HILL) previously requested the same exemption. The key concept in these requests was that although the unit for

disintegration per minute (dpm) is not permitted for records required by 10 CFR 835, it is an accepted historically conventional unit in which low levels of radioactivity were measured

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and recorded. These sites use the unit dpm to record the results of excreta radio-bioassay measurements. EH-52 agreed with PNNL and CH2M HILL that this assertion was reasonable and, because both PNNL and CH2M HILL demonstrated that the exemption request met the criteria in 10 CFR 820, "Procedural Rules for DOE Nuclear Activities," for approval, granted these exemptions.

EH-52 believes these exemption requests to be applicable to all DOE sites. Therefore, EH-52 is working to amend 10 CFR 835 and will consider making appropriate revisions to address these and other issues.

Discussion

The intent of the 10 CFR 835.4 requirement was to preclude exclusive use of International System (SI) units (e.g., Sv, Gy, Bq) in reports. This was done to avoid confusion from inconsistent DOE site use of units, traditional or SI, in reports. The SI units were allowed to be used parenthetically. The intent was not to preclude such traditional units as dpm or mass units in bioassay results. However, as written, only the units of curie, rad, roentgen, or rem, including multiples and subdivisions of these units, are allowed.

WSRC's exemption request states that several of the special circumstances for granting exemptions to DOE's nuclear safety rules specified in 10 CFR 820.62 have been met. Based on the above discussion, EH-52 found compelling WSRC's assertion that the criterion in 10 CFR 820.62(d)(2) has been met. The 10 CFR 820.62(d)(2) provides for granting exemptions if application of the requirements in the particular circumstances would not serve or is not necessary to achieve its underlying purpose, or would result in resource impacts, which are not justified by the safety improvements.

Concurrence

Relief from the requirement in 10 CFR 835.4 should be provided, with a condition. This decision is in recognition of the fact that the requirement was never intended to exclude the use of the units requested.

Conclusion

The above exemption meets the criteria for granting an exemption under 10 CFR 820.62.

1. Granting this exemption would be authorized by law.
2. This exemption would not present an undue risk to public health and safety, the environment, or facility workers.

3. The exemption would be consistent with the safe operation of a DOE nuclear facility.

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4. In granting this exemption pursuant to 10 CFR 820.62(d)(2), DOE recognizes that special circumstances exist that justify exemption because application of the requirements in the particular circumstances would not serve, or is not necessary, to achieve its underlying purpose or would result in resource impacts that are not justified by the safety improvements.

Based on the above, EH-52 concurs with the request for exemption with the condition that:

WSRC shall update its radiation protection program to allow mass units and use of dpm in records of bioassay monitoring results.

EXEMPTION DECISION

On January 12, 2005, the Westinghouse Savannah River Company (WSRC) requested an exemption from certain Department of Energy (DOE) regulations: specifically, relief from a requirement contained in title 10, Code of Federal Regulations, part 835 (10 CFR 835), "Occupational Radiation Protection," as it pertains to the use of certain units in reporting bioassay results.

In particular, WSRC requested an exemption from requirements contained in 10 CFR 835.4, to use certain units in records required by 10 CFR 835.

Under the terms set forth in 10 CFR 820.61 and the National Defense Authorization Act for 2000 (Public Law 106-65) as amended, the Assistant Secretary for Environment, Safety and Health (EH-1) and the Deputy Administrator for Defense Programs (NA-10) are the Secretarial Officers granted the review and approval authority for exemption requests made with respect to 10 CFR 835 at sites where both the National Nuclear Security Administration and other DOE elements have line authority for radiological operations. Based on a review of the supporting documentation, EH-1 and NA-10 find that the request set forth above has been justified for relief. Specifically, EH-1 and NA-10 find that the exemption criteria of 10 CFR 820.62 have been met. The requested exemption is not prohibited by law; will not present an undue risk to the public health and safety, the environment, or facility workers; and is consistent with the safe operation of a DOE nuclear facility. Also, EH-1 and NA-10 have determined that the exemption meets the special circumstances, described in the Technical Review prepared by the Office of Worker Protection Policy and Programs, which constitutes a sufficient basis upon which to grant this exemption.

On the basis of the foregoing, EH-1 and NA-10 hereby approve the WSRC request for exemption from 10 CFR 835.4, with a condition:

Condition:

WSRC shall update its radiation protection program to allow mass units and use of dpm (disintegration per minute) in records of bioassay monitoring results.

Pursuant to 10 CFR 820.66, WSRC has 15 days from the date of the filing of this decision to file a Request to Review with the Office of Environment, Safety and Health. The Request to Review shall state, specifically, the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested. If no Request to Review is submitted, the Exemption Decision becomes a final order 15 days after it is filed.

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